

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA :
Plaintiff : 3:17-cr-00161-
v. : ADC-1
JAMES FRANCIS GORMAN :
Defendant :

CHANGE OF PLEA HEARING

Was held Before HONORABLE US MAGISTRATE JUDGE SILVIA
CARRENO-COLL, sitting in San Juan, Puerto Rico, on
July 10, 2017 at 4:38 p.m.

1 APPEARANCES:

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3 FOR THE GOVERNMENT:

4 ELBA GORBEA, SAUSA

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6 FOR THE DEFENDANT:

7 GIOVANNI CANINO, AFPD

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1 (The case is called)

2 MS. GORBEA: Good afternoon, Your Honor. The
3 Government is ready to proceed.

4 THE MAGISTRATE: Good afternoon, Ms. Gorbea.

5 All right. Mr. Gorman, I understand that you're fluent
6 in the English language, right?

7 THE DEFENDANT: I am.

11 THE DEFENDANT: Yes, ma'am.

12 THE MAGISTRATE: All right, and it's a one
13 count indictment, right?

14 THE DEFENDANT: Yes, ma'am.

15 THE MAGISTRATE: Okay. Is that what you want to
16 do?

17 THE DEFENDANT: Yes, ma'am.

18 THE MAGISTRATE: All right. I'm going to put
19 you under oath.

20 (The defendant was duly sworn)

21 THE MAGISTRATE: All right. You're under oath,
22 Mr. Gorman. You cannot lie because to lie under oath has
23 consequences, which may include perjury charges. Is this
24 clear?

THE DEFENDANT: I understand.

1 THE MAGISTRATE: Okay. If at any time during
2 this hearing there's something that you don't understand
3 that you wish that I explain, clarify, just say so. It's
4 fine. You may confer with your lawyer at any time during
5 this hearing as many times as you need, as long as you
6 need. Just make sure that you understand everything that
7 happens here this afternoon. This is --

8 THE DEFENDANT: Thank you.

9 THE MAGISTRATE: -- understood?

10 THE DEFENDANT: Yes, ma'am.

11 THE MAGISTRATE: State your full name.

12 THE DEFENDANT: James Francis Gorman, the IV.

13 THE MAGISTRATE: How old are you?

14 THE DEFENDANT: Forty.

15 THE MAGISTRATE: How far did you go in school?

16 THE DEFENDANT: I have a Bachelor's in
17 Communications from Boston University.

18 THE MAGISTRATE: Okay, and your last job or
19 occupation?

20 THE DEFENDANT: I'm a commercial fisherman.

21 THE MAGISTRATE: Have you been under the care
22 of a any type of doctor recently?

23 THE DEFENDANT: Excuse me. I don't see a
24 physician here at the Guaynabo MDC but I do in
25 Massachusetts and I take a bipolar disorder medication.

1 THE MAGISTRATE: Okay.

2 THE DEFENDANT: I have to take medication for
3 -- I work like fifty hour days so I take, like,
4 medication to sleep.

5 THE MAGISTRATE: Okay, and you haven't been
6 taking this medication since you've been incarcerated?

7 THE DEFENDANT: No. I take all of it.

8 THE MAGISTRATE: Oh, you've --

9 THE DEFENDANT: I do, ma'am.

10 THE MAGISTRATE: Okay. Did you take your last
11 prescribed drugs?

12 THE DEFENDANT: Absolutely.

13 THE MAGISTRATE: And how do you feel right now?

14 THE DEFENDANT: I'm okay, ma'am.

15 THE MAGISTRATE: You're okay?

16 THE DEFENDANT: Yes, ma'am.

17 THE MAGISTRATE: You're not drowsy. You're not
18 confused. You're not disoriented.

19 THE DEFENDANT: I'm drowsy. I've been up since
20 6 o'clock this morning, but I'm okay.

21 THE MAGISTRATE: Okay.

22 THE DEFENDANT: I understand everything that's
23 going on.

24 THE MAGISTRATE: Okay. The reason why I ask you
25 these questions is because I need to make sure that you

1 feel well enough to know what's going and that you feel
2 well enough to be able to make a decision in terms of
3 what you want to do and make the decision intelligently
4 and knowingly and voluntarily. Is there anything going
5 on in how you feel right now that may impair that
6 ability?

7 THE DEFENDANT: No. I'm all right.

8 THE MAGISTRATE: Okay.

9 THE DEFENDANT: Thank you.

10 THE MAGISTRATE: In the past twenty-four hours,
11 other than your prescribed medication, any drugs,
12 medications --

13 THE DEFENDANT: No, I'm --

14 THE MAGISTRATE: -- or alcoholic beverages?

15 THE DEFENDANT: No.

16 THE MAGISTRATE: Okay. I need to ask, okay, I
17 need to make sure.

18 THE DEFENDANT: Yes, ma'am.

19 THE MAGISTRATE: You would be surprised of the
20 type of answers I get.

21 THE DEFENDANT: I wouldn't be surprised at all,
22 ma'am.

23 THE MAGISTRATE: I need to make sure.

24 THE DEFENDANT: Yes, ma'am.

25 THE MAGISTRATE: And ever been treated or

1 hospitalized for addiction problems?

2 THE DEFENDANT: No.

3 THE MAGISTRATE: All right. How long have you
4 been diagnosed with bipolar disorder?

5 THE DEFENDANT: Since I was like eleven or
6 twelve.

7 THE MAGISTRATE: Okay, since you were very
8 young. Okay. And do you have a copy of the indictment,
9 the accusation?

10 THE DEFENDANT: I don't have one with me but
11 I've seen it, ma'am, and had an opportunity to review
12 it.

13 THE MAGISTRATE: Okay, and when you were
14 originally arrested, you did receive a copy.

15 THE DEFENDANT: When I came back to Puerto
16 Rico.

17 THE MAGISTRATE: Okay, and have you discussed
18 the charges with Mr. Canino?

19 THE DEFENDANT: Yes, ma'am.

20 THE MAGISTRATE: Do you clearly and fully
21 understand what the accusation is?

22 THE DEFENDANT: I do.

23 THE MAGISTRATE: Okay, and are you satisfied
24 with your legal representation?

25 THE DEFENDANT: Absolutely.

1 THE MAGISTRATE: All right. I find the
2 defendant is fully competent. Any concerns, Ms. Gorbea
3 or Mr. Canino?

4 MS. GORBEA: No, Your Honor.

5 MR. CANINO: No.

6 THE MAGISTRATE: I don't have any either. Mr.
7 Gorman seems lucid, oriented, we're effectively
8 communicating. I don't have any reason to doubt he's
9 competent this afternoon so I'm declaring him competent
10 and I'm going on with the hearing.

11 Before I go into the actual substance, I advise you
12 that you have the right to have this hearing before a
13 District Judge. I am a Magistrate Judge and Magistrate
14 Judges like myself what is called limited jurisdiction.

15 THE DEFENDANT: I understand.

16 THE MAGISTRATE: It means that I have less
17 power than a District Judge. For me to preside over this
18 hearing you would need to agree or consent. If you do,
19 we go on, we finish and at the end of the hearing,
20 again, I make the finding that you're competent, again I
21 make the finding that I think you know what you're doing
22 and you want to do it.

23 Then I issue a Report and Recommendation telling
24 the presiding Judge in your case, Judge Delgado Colón,
25 that your plea should be accepted, but my

1 recommendations may be reviewed by her. Understanding
2 that, do you still wish to proceed before me?

3 THE DEFENDANT: Yes, ma'am.

4 THE MAGISTRATE: Is that why you signed this
5 consent form?

6 THE DEFENDANT: Yes, ma'am.

7 THE MAGISTRATE: Okay, and did you discuss this
8 with your lawyer --

9 THE DEFENDANT: I did.

10 THE MAGISTRATE: -- prior to signing it?

11 THE DEFENDANT: I did.

12 THE MAGISTRATE: Yes, you did?

13 THE DEFENDANT: Yes, ma'am.

14 THE MAGISTRATE: Okay. I'm going to approve it
15 finding that Mr. Gorman is aware of his right to have
16 this hearing before a District Judge but consents to
17 proceed before a Magistrate Judge.

18 Mr. Gorman, has anyone threatened you, has anyone
19 forced you to have you plead this afternoon?

20 THE DEFENDANT: No, ma'am.

21 THE MAGISTRATE: Has anyone offered you
22 anything of value in exchange for your plea?

23 THE DEFENDANT: No, ma'am.

24 THE MAGISTRATE: Do you intend to plead guilty
25 out of your own free will because you are, in fact,

1 guilty of the one count indictment pending against you?

2 THE DEFENDANT: Yes, ma'am.

3 THE MAGISTRATE: Okay. Where were you born?

4 Where were you born?

5 THE DEFENDANT: Chicago.

6 THE MAGISTRATE: That makes you a U.S. citizen
7 and at this time I must advise you that once adjudged
8 guilty of a felony, U.S. citizens are deprived of some
9 rights like your right to vote in a federal election,
10 your right to serve on a Jury, your right to possess a
11 firearm and your right to hold public office. Are you
12 aware of those consequences?

13 THE DEFENDANT: Yes, ma'am.

14 THE MAGISTRATE: Okay. Count 1, the only count
15 in your indictment, which charges with failing to
16 register carries a term of imprisonment of up to --

17 MS. GORBEA: Ten years, Your Honor.

18 THE MAGISTRATE: Thank you. Up to ten years, a
19 fine of up to two hundred and fifty thousand dollars and
20 a term of supervised release that could be for life. Do
21 you understand that?

22 THE DEFENDANT: I do.

23 THE MAGISTRATE: And do you understand that
24 supervised release is time after any term of
25 imprisonment, you're done serving, you're in the free

1 community but if you violate any condition, you may be
2 revoked and be sent back to jail.

3 THE DEFENDANT: Yes, ma'am.

4 THE MAGISTRATE: Do you understand also that
5 there's a special monetary assessment of one hundred
6 dollars which has to be assessed? The law so requires.
7 The money goes to a special victim's fund.

8 THE DEFENDANT: Yes, ma'am.

9 THE MAGISTRATE: All right. Mr. Canino, is your
10 client facing other charges, pending cases --

11 MR. CANINO: No, Your Honor.

12 THE MAGISTRATE: -- pending sentences? No. No
13 need to give him any warnings?

14 MR. CANINO: No, ma'am.

15 THE MAGISTRATE: Okay. So we already discussed
16 the maximum penalties provided by law and that's what
17 the law says but there's also the sentencing guidelines
18 and this guide provides for ranges of time to be served
19 as the appropriate sentence.

20 Have you discussed with Mr. Canino the
21 applicability of the sentencing guidelines in your case?

22 THE DEFENDANT: Yes.

23 THE MAGISTRATE: And do you understand they're
24 not mandatory. The Judge may depart because she may
25 impose a sentence that could be more severe or less

1 severe.

2 THE DEFENDANT: I understand.

3 THE MAGISTRATE: Okay. There's also the
4 sentencing factors. Factors are found also in the law at
5 18 U.S. Code, Section 3553(a) and they are as follows:
6 The seriousness of the offense, the need for deterrence
7 of criminal conduct, the need to protect the public from
8 further crimes, the need to provide defendants with
9 educational, vocational, medical training or medical
10 care, the need to provide restitution if any specific
11 victim is identified and the Court may take into account
12 any special characteristics on the part of the defendant
13 to be sentenced. Are you clear on the factors?

14 THE DEFENDANT: Yes, ma'am.

15 THE MAGISTRATE: Parole has been abolished in
16 the federal system. If you're sentenced to prison, you
17 will not be released on parole. Is that clear?

18 THE DEFENDANT: Yes, ma'am.

19 THE MAGISTRATE: Do you know that if you go
20 ahead and plead guilty this afternoon, you will be
21 waiving Constitutional Rights that you have?

22 THE DEFENDANT: Yes, ma'am.

23 THE MAGISTRATE: So you do know that you have
24 the right to persist in your plea of not guilty. If you
25 persist in your plea of not guilty, then you go on to

1 exercise your right to go to trial. It will be a speedy,
2 public trial by Jury before a District Judge. It could
3 be without a Jury if both the prosecutor and the Judge
4 agree.

5 At trial you would be presumed innocent -- at trial
6 and throughout all proceedings, you're presumed
7 innocent. The Government has to prove you're guilty
8 beyond a reasonable doubt.

9 At trial you get to see and hear all the witnesses
10 for the Government. Your attorney may cross-examine
11 those witnesses in your defense. If you cannot afford an
12 attorney, one will be assigned to represent you
13 throughout all stages of the proceeding.

14 At trial also you make the decision whether you
15 want to testify or not. If it's your decision not to
16 testify, it cannot be used against you. It's part of
17 your right not to incriminate yourself.

18 Also at trial you can use the power of the Court.
19 It's called the subpoena power of the Court to compel
20 the attendance of witnesses or for the production of any
21 evidence that you can use to defend yourself from the
22 charges and finally, you have the right to have a jury
23 return a unanimous verdict before you could be found
24 guilty or not guilty. Do you understand --

25 THE DEFENDANT: Yes, ma'am.

1 THE MAGISTRATE: -- these Constitutional
2 Rights? All right. If you decide that you do want to
3 exercise your rights and go to trial, as I said before,
4 the Government would need to prove beyond a reasonable
5 doubt each of the elements of the offense charged and
6 support those elements with evidence and the elements
7 are as follows: The Government must show that on or
8 about September 20th of 2016, you were supposed to
9 register and you failed to do so because you have a
10 conviction under the Commonwealth of Massachusetts state
11 law and you knowingly failed to register in the Sex
12 Offender Registration and Notification at registry. Do
13 you understand the violation of law?

14 THE DEFENDANT: Yes, ma'am.

15 THE MAGISTRATE: And the Government must show
16 that you knew what you were doing and you wanted to do
17 it; that it wasn't an accident that just happened. Is
18 this clear also?

19 THE DEFENDANT: Yes, ma'am.

20 THE MAGISTRATE: All right. That's the factual
21 basis. Ms. Gorbea.

22 MS. GORBEA: Your Honor, in this case if -- the
23 Court asked for the factual basis in this case?

24 THE MAGISTRATE: Yes.

25 MS. GORBEA: If this case would have gone to

1 trial, the United States would have proven beyond a
2 reasonable doubt that on or about February 11, 1997,
3 defendant James Francis Gorman was convicted of indecent
4 assault and battery on a person in relation to Chapter
5 265, Section 13(h) in the state of Boston,
6 Massachusetts.

7 The victim was a fourteen year old female minor.
8 Our review of the Commonwealth of Massachusetts Sex
9 Offender Registration documents revealed that defendant
10 Gorman is a Tier 2 offender and has a twenty year
11 registration requirement.

12 On January 11, 2010, defendant Gorman registered as
13 a sex offender with the Commonwealth of Massachusetts
14 Sex Offender Registry and on January 25, 2010, signed
15 the Commonwealth of Massachusetts Sex Offender
16 Registration change of address and annual registration
17 requirements which advise, among other things, that the
18 person has to notify the Sex Offender Registry Board in
19 writing not less than ten days prior to making any
20 change in residence, employment or attendance at any
21 educational institution and is required to immediately
22 contact and advise of his presence to the appropriate
23 authorities in any other state in which this person
24 locate himself for the purpose of residence, employment,
25 education or vocational training and failing to do so

1 may be subject to criminal prosecution.

2 As part of the continuing investigation by the
3 United States Marshal Service, it was found that
4 defendant James Francis Gorman traveled to Puerto Rico
5 on September 20, 2016 to work as a local fisherman. The
6 United States Marshal Service verified all thirteen
7 regions that comprise the Puerto Rico Sex Offender
8 Registry, each of which has stated that James Francis
9 Gorman has not registered as a sex offender with the
10 Puerto Rico authorities.

11 Mr. James Francis Gorman admits that on or about
12 September 20, 2016, in the District of Puerto Rico and
13 elsewhere within the jurisdiction of this Court, he, a
14 person required to register under the Sex Offender
15 Registration and Notification Act and a sex offender by
16 reason of a conviction under the Commonwealth of
17 Massachusetts state law, traveled in interstate commerce
18 and did knowingly fail to register or update a
19 registration in violation of Title 18, United States
20 Code, Section 2250.

21 At trial the United States would have proven beyond
22 a reasonable doubt that the defendant is guilty as
23 charged in Count 1 of the indictment by presenting
24 physical and documentary evidence and the testimony of
25 the United States Marshal Service, the United States

1 Coast Guard officials and officials from the
2 Massachusetts law authorities, among others and
3 discovery has been provided in this case.

4 THE MAGISTRATE: Did you receive this
5 discovery, Mr. Canino?

6 MR. CANINO: Yes, Your Honor, we did.

7 THE MAGISTRATE: Did you discuss it with your
8 client?

9 MR. CANINO: Yes, Your Honor, we did.

10 THE MAGISTRATE: All right. Mr. Gorman, do you
11 admit that on or about September 20, 2016 you were a
12 person that was required to register under the Sex
13 Offender Registration Notification --

14 THE DEFENDANT: Yes.

15 THE MAGISTRATE: -- Act? And do you admit that
16 you failed to do so?

17 THE DEFENDANT: Yes.

18 THE MAGISTRATE: And do you admit that you knew
19 what you were doing?

20 THE DEFENDANT: Yes.

21 THE MAGISTRATE: All right, and being that he
22 has admitted to the essential elements of the offense.

23 MS. GORBEA: Yes, Your Honor, may we approach
24 briefly?

25 THE MAGISTRATE: You may.

1 (At sidebar)

2 MS. GORBEA: It's just a matter that the Court
3 previously mentioned that the term of supervised release
4 was up to life --

5 THE MAGISTRATE: You are correct because it
6 involves a minor. In these type of cases there is the
7 possibility -

8 MS. GORBEA: And it's okay. It's just that I
9 was under the impression that it was of not more than
10 three years but I do believe that the Court is correct.
11 It's just that I was just reviewing --

12 THE MAGISTRATE: Mr. Canino.

13 MR. CANINO: Judge, you caught me off guard. I
14 thought --

15 THE MAGISTRATE: Yeah. That's what I was --

16 MR. CANINO: What is the question? Sorry, Your
17 Honor.

18 MS. GORBEA: So that's okay. Okay, no problem.
19 I agree -- I agree with the Court then. I was just
20 trying to look for the statute but --

21 THE MAGISTRATE: Pardon me. It's always
22 convenient for -

23 MS. GORBEA: Exactly.

24 THE MAGISTRATE: The warnings -

25 MS. GORBEA: Uhum. Exactly. Okay. Thank you,

1 Your Honor.

2 (In open court)

3 THE MAGISTRATE: Anything else?

4 MS. GORBEA: Nothing further from the
5 Government, Your Honor.

6 THE MAGISTRATE: Okay. I believe he has
7 admitted to the essential elements of the offense. Mr.
8 Gorman, how do you plead to the one count indictment?

9 THE DEFENDANT: Guilty, Your Honor.

10 THE MAGISTRATE: All right. I believe that this
11 plea is knowing, it's voluntary and there is a basis
12 that support the elements of the offense. I will issue a
13 Report and Recommendation that a plea of guilty be
14 entered as to the one count indictment pending in
15 Criminal number 17-161, United States of America versus
16 James F. Gorman.

17 Mr. Gorman, there will be a written Pre-Sentence
18 Report. You will be interviewed for the preparation of
19 that report. That document is very important. It will be
20 used by Judge Delgado for sentencing purposes.

21 I'm advising you that you have the right to be
22 assisted by your lawyer while you are interviewed.

23 Mr. Canino will set up the appointment with the
24 Probation Office and the Judge will set -- Delgado Colón
25 will set the date for the sentencing hearing. Thank you.

1 Good luck.

2 MS. GORBEA: Thank you, Your Honor.

3 (The hearing ended at 4:55 p.m.)

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1 U.S. DISTRICT COURT)

2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 21
5 pages is a true and accurate transcription to the best
6 of my ability of the proceedings in this case before the
7 Honorable U.S. Magistrate Judge, Silvia Carreno-Coll, on
8 July 10, 2017.

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12 S/Boabdil Vazquettelles

13 Court Reporter

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